[redacted]LE COPY

FILED
MAY 12 1961
JAMES R. BROWNING, Clerk

In the Supreme Court
of the United States

OCTOBER TERM, 1960

No. [illegible]

W. B. HERRON,
Appellant,

v.

THE UNITED STATES OF AMERICA,
Appellee.

BRIEF OPPOSING MOTION TO DISMISS

On Appeal from the United States District Court for the District of Oregon

Appearing herein
In propria persona:
W. B. HERRON,
c/o Western Oil Co.,
1043 N. E. Klickitat,
Portland 20, Oregon,
Appellant

ARCHIBALD COX,
Solicitor General,
WILLIAM H. ORRICK, JR.,
Assistant Attorney General,
ALAN S. ROSENTHAL,
ROBERT E. POWELL,
Attorneys,
Department of Justice,
Washington 25, D. C.
For Appellee.

INDEX

	Page
Opposing Statement	1
Opinion Below	2
Jurisdiction	2
Constitutional Provisions Involved	3
Questions Presented	5
Statement	8
Argument	9
Conclusion	10
Certificate of Service	11

In the Supreme Court
of the United States

OCTOBER TERM, 1960

No. 791

W. B. HERRON,

Appellant,

v.

THE UNITED STATES OF AMERICA,

Appellee.

BRIEF OPPOSING MOTION TO DISMISS

On Appeal from the United States District Court for the District of Oregon

OPPOSING STATEMENT

The appellant pursuant to Rules 16-(3), 33, 39 and 40 of this Court, answers to the appellee's move seeking to have this case dismissed.

Appellant succinctly reiterates with amplifications, that the United States District Court for the District of Oregon grossly erred in denying appellant's guaranteed State and Federal Constitutional rights and privileges to a jury trial; wherein to present grievances for a full

adjudication of Cass No. 60-292. Therefore, good causes are shown that this appeal be sustained, the disparagement be remedied, the appellant have his day in court.

OPINION BELOW

The Opinion and Order of the United States District Court for the Oregon District is not reported. The complete certified transcribed record of the only hearing proceedings held in this case by the Court below, was before the Honorable Chase A. Clark, Chief Judge of the United States District Court for the District of Idaho sitting by special assignment at the instance of the United States Court of Appeals for the Ninth Circuit, at Portland, Oregon, on October 14, 1960; and is fully set forth in appellant's Jurisdictional Statement (J. S. 9-16)[1]

JURISDICTION

The Opinion and Order of Honorable Chas A. Clark was rendered and filed on October 14, 1960; Notice of Appeal filed November 12, 1960; time within which plaintiff-appellant was to docket his Jurisdictional Statement was twice enlarged to and including March 6, 1961, by the same Judge who heard this case and issued the Order of Disimssal—Honorable Chase A. Clark. Appellant's Jurisdictional Statement was docketed by the clerk of this Court March 4, 1961 as No. 791, October Term, 1960. This case No. 60-292 was filed in the

[1] "J. S." refers to appellant's Jurisdictional Statement.

United States District Court for the District of Oregon on July 22, 1960. The dates of the incidents of gross misconduct; wilful abuse of judicial powers; arbitrary arrest without any due and proper processes of law occurring within the courtroom of Judge William G. East, and which was committed and ordered by said Judge,—before,—plaintiff W. B. Herron had completed presentation of his case to the empaneled jury, was on July 23, 24, 25, 1958.

The jurisdiction of this Court is invoked by reason that said acts and matters involved concern serious breach wilful violations of appellant's constitutional rights as specifically expressed and guaranteed in the Federal Bill of Rights relative to those securities, rights, liberties and grants therein provided (J. S. 17-18).

CONSTITUTIONAL PROVISIONS INVOLVED

Appellant cites this case involves the constitutional provisions which are all enumerated in the Jurisdictional Statement (J. S. 17-18). And therein are all sufficient citations which gives guarantees to all citizens, including appellant, that the Government of the United States—particularly the Judicial Branch—shall sustain all such rights, that they shall not be disparged.

Article *III* of the Constitution established the Supreme Court and conferred exercising powers on Congress with regard to the Judiciary and its operations; the First Congress laid the foundations for the Federal Courts and Federal Jurisdiction in the Judiciary Act of

1789; arrangements of said Act have undergone changes since 1789; but not in any material respects as to the Supreme Court of the United States, the only Federal Court mentioned in the Constitution and which was designated as having the ultimate judicial authority of the United States. Thus it becomes well established and most evident the present day Judiciary as it operates and concerns the United States Circuit and District Courts, that all branches of the United States Government; Executive, Legislative and Judicial, are all involved in some form of concern and/or liability when a Federal District Judge will wilfully and arbitrarily violate a citizen's grants and rights to moneys and property all of which were solely decreed to him by a state court, then further deny his rights to a day in court to present such grievances before his peersmen at a jury trial; all of such foregoing acts were wilfully committed by the United States Government against the appellant. Committed by that very branch of said Government which was specially assigned and delegated to insure, protect and serve as the guardian of justice to all citizens including the appellant; but now has shown and proven itself to be the culprit.

Said Thomas Jefferson in 1821:—

> "It has long been my opinion, and I have never shrunk from its expression . . . that the germ of dissolution of our Federal Government is in the constitution of the Federal Judiciary; an irresponsible body—for impeachment is scarcely a scarecrow—working like gravity by night and by day, gaining a little today and a little tomorrow, and advancing its noiseless step like a thief, over the field of jurisdiction, until all shall be usurped from the

> States, and the Government of all be consolidated into one. To this I am opposed; because, when government, domestic and foreign, in little as great things, shall be drawn to Washington as the center of all power, it will render powerless the checks provided of one government or another, and will become as venal and oppressive as the government from which we separated."

Such inroads of judicial aggressiveness could appropriately be termed and is tantamount to an insurgent's march boldly paced upon the freedom paths of the State of Oregon grandiosely displaying the rent flag of Oregon State authority.

QUESTIONS PRESENTED

Appellant answer appellee's citations under the caption, question presented, to-wit: (1) "that the United States had not consented to be sued,"--appellant answers: astoundingly preposterous it is for counsels of the Government to suggest such when this case involves wilful violations of Constitution Law. The Government just does not have any defense for such deliberate judicial misconduct, for there is none whatsoever. If there was, counsels would be forthcoming with an abundance of citations; being none the only feeble answer is in the nature of a move to dismiss; preponderantly equivalent to a self admission there is no defense to present; so therefore invoke artificial reason and law seeking a speedy summary form of disposition. By-passing the natural law ordained by God; as Magna Carta and our Federal Constitution stands today for rights that are

divine in their nature. Our Government is of the people; founded by the people of the thirteen original states; the states being the genesis of our Federal Constitution; Constitutional Law thereby is a mandatory law with mandatory power exercised by the authority of the Supreme Court given to it by the Constitution; all other court's power and duties are of Legislative authority, not Constitutional. Therefore when any citizen's Constitutional rights have been wilfully violated, breached or disparged, as appellant's has, he needs no consent from Congress to petition for a jury trial wherein to present his grievances. If it were needed, the founding fathers of our Government would of inserted such in the Articles of the Federal Constitution being God inspired men that they were; not yielding to the ever constant urge today, to indulge in unnatural artificial reasoning; devoid of spiritual receptiveness. The Tucker and Tort Acts have no significance or relationship whatsoever to any of the matters, issues, facts, circumstances and things involved in this case.

(2) "That Federal Judges are not subject to the control of the Executive;" appellant answers: The Federal District Judges are appointed by the Executive Branch of the Government, the President, approved by the Senate, thus Legislative; and when they take the oath of allegiance to the United States Government they do so in a dual respect, in both responsible capacities as citizens in employment and civil officers swearing allegiance as such citizens and officers; are thereby subject to both impeachment and prosecution for their crimes and/or misdemeanors (Article *II*, Section 4 of the Federal Constitution).

In case No. 7975, referred to by counsels, it has positively been shown the acts of the Federal Judges were absolutely not any form of excusable error, just outright arbitrary deliberate acts of inserting a prejudiced and perjured party in said case who had no rights to assert or any claim upon the proceeds of the insurance claim case No. 7975; and it was so declared by an Oregon state court decree. Said Federal Judges further denying appellant a jury trial sans the presence of appellant's divorced wife; who was subsequently "promoted" to position as the plaintiff in said case by said arbitrary and prejudiced court, which then relegated appellant to the demoted position as a defendant.

Now again, in this case No. 60-292 appellant has been denied a trial by the same court. When such acts are wilfully perpetrated and can positively be proven, which they were, the Government is responsible for the acts of said Federal Judges; particularly so when it was also shown and proved that said acts were designed to defraud appellant of his insurance claim proceeds. All of such proofs are contained right within the records and files of case No. 7975; along and together with a full accounting of said judge's angered tones and demonstrations, overt prejudicial acts, vociferations with physical gesticulations and with a contemptible smirk upon his countenance sentenced appellant to jail under the feigned mein of having been so sentenced for the erroneous charge, contempt of court; then exclaiming to the assembled court, "Herron got just what he was looking for."

(3) Relative to counsels for the Government contending that no jurisdiction is conferred upon a District Court; appellant answers: Article *III* of the Constitution conferred exercising powers upon Congress to establish the Federal District Courts and Legislative Courts; and appellant has answered in detail in the preceding No. (2) Question.

Appellant's only question presented in this case is: May he have the lower court's order emended which denied his State and Federal constitutional rights to a jury trial, wherein he could present his grievances; thus restoring his rights and privileges thereby having his day in court?

STATEMENT

Appellant in answering counsels, alleged facts, under the caption Statement, cites to-wit: Counsels have purposely omitted the real truth and facts concerning the reason why appellant courteously objected to taking the witness stand. Judge East became visibly bitter and extremely vengeful toward appellant deliberately removing several of appellant's witnesses while he was examining them, finally removing appellant's last witness, Judge East thenceforth arbitrarily vociferated a command for appellant to take the witness stand, "for the defense," without giving appellant his constitutional right and privilege to finish presenting his case and taking the witness stand in his own behalf.

Counsels for the Government omitted the actual full

truth by not stating the reason why the Court of Appeals denied appellant's writs of prohibition and mandamus; it being by reason said Court was without proper jurisdiction in the matters involved; which appellant was well advised in before he filed said writs, but had a specific purpose for so doing, of which counsels for the Government know nothing of.

Counsels for the Government further "coyered" the real full truth by merely stating appellant's writ of certiorari was denied; the full and actual truth being that thereafter, another Federal Judge of the Idaho District took over and presided at all hearings in case No. 7975 from thenceforth; and that also another Federal Judge of the same district presided entirely in this case No. 60-292.

Appellant finds it unncessary, too ridiculous, to answer counsels repeated statements relative to appellant's action being one subjected to the restrictions of the Tucker or Tort Acts. Appellant has amply covered the rebuttal to counsel's designed diversion. Right from the onset appellant made it clear his action was not one of Tort but deliberate violations of Constitutional Law committed by the Federal Court itself.

ARGUMENT

Appellant's request that he be allowed his day in Court to present his grievances before his peersmen should be granted, particularly so, when direct violations of constitutional law have been committed by

Federal Judges themselves. The vengeful wilful act of arbitrary arrest was entirely unwarranted: the court had its discretionary powers to invoke, declaring a mistrial, had there been any actual reason for so doing.

CONCLUSION

For the foregoing reasons, and the following, appellant respectfully presents that this appeal should be sustained.

By reasons of, to-wit: violations of constitutional law; admitting a third party to file a knowingly false affidavit in a Federal District Court asserting a non-existing insurance claim thereby collecting $750.00 from same; violation of appellant's state rights; violation of Oregon state court's decrees and orders; the congressional investigation records showing there was very pertinent reasons for, withholding for some time the appointment of certain judge and/or judges herein mentioned due to their physical and mental unfitness; that all such foregoing facts along with innumerable others were known to all the said Judges, the office of the United States Attorney, C. E. Luckey in Portland, Oregon; and the United States Department of Justice; yet nothing has been done to remedy these revolting conditions, in many respects they have aided, covered and shielded one another; upon the appellant seeking to arrange an appearance before the Federal grand jury he was told by C. E. Luckey's office to forthwith leave his office or he would be ordered arrested, *again*.

Dated this 10th day of May, 1961, at Portland, Oregon.

W. B. HERRON /s/
Appellant in propria persona.

CERTIFICATE OF SERVICE

STATE OF OREGON)
) ss. AFFIDAVIT
COUNTY OF MULTNOMAH)

I, W. B. HERRON being first duly sworn, depose and say, that I am the appellant herein acting as my own attorney appearing in propria persona, do hereby Certify: that in compliance with Rule 33 of Revised Rules of the Supreme Court Of The United States, I have forwarded via Certified Air Mail with return receipt requested, Service of five copies of the foregoing Brief Opposing, Motion to Dismiss, to Archibald Cox, Solicitor General of the United States Department Of Justice at Washington 25, D. C. That they were placed in a sealed package properly addressed and deposited for air mail at the main branch Portland, Oregon Post Office at Broadway and S. W. Glisan Street on this date.

That inasmuch I am not represented by counsel a member of the bar of the Supreme Court Of The United States, I therefore will furnish proof of such service having been made by forwarding to the Clerk of the Supreme Court of the United States, the Certified Mail Receipt together with its Return Receipt Card immediately upon receipt of same from the recipient.

Dated this 10th day of May, 1961 at Portland, Oregon.

W. B. HERRON
Appellant in propria persona.

W. B. Herron
c/o Western Oil Co.
10443-N. E. Klickitat
Portland 20, Oregon
AL-4-2867

Subscribed and sworn to before me this 10th day of May 1961 at Portland, Multnomah County Oregon.

VIOLETTE M. COURTRIGHT
Notary Public For Oregon.
My Commission Expires Feb. 5, 1962